FILE COPY

No 974

SUPREME COURT OF THE UNITED STATES

October Term 1943

JOE JOHNSON ROBERTS

vs.

MARGARET ELIZABETH ROBERTS and UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

JOE JOHNSON ROBERTS

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SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable Supreme Court of the United States:

Petitioner, Joe Johnson Roberts, shows to the Court as follows, to-wit:

THE MATTER INVOLVED IS: whether Joe Johnson Roberts, father of Joe William Roberts, deceased, or Margaret Elizabeth Roberts, widow of deceased, is entitled to the proceeds of a $10,000 government war risk insurance policy on the life of the deceased, who was killed in line of duty in the U. S. Air Force on the 10th day of January, 1944.

The judgment of the Circuit Court of Appeals for the Fourth Circuit reversing the District Court was entered on November 12, 1946 (Record 112), the opinion of the Circuit Court of Appeals being shown at page 106 of the Record.

Basis Upon Which This Court Has Jurisdiction to Review

The Circuit Court of Appeals has decided an important question of federal law, which has not been, but should be, settled by the Supreme Court; concerning insurance policies of nationwide importance, and its decision has reversed the District Court, which heard the case with a jury waived, with most of the witnesses in person before the District Court.

Also, we maintain that the decision rendered by the Circuit Court of Appeals in the present case is in conflict with that rendered by the Circuit Court of Appeals for the Tenth Circuit in the case of *Bradley* v. *U. S.*, 143 F. (2d) 573, which was decided under evidence almost identical with the evidence in the present case, although the opinion in the present case seeks to differentiate the two cases.

That there are special important reasons for the highest Federal Court to decide the question at bar, and that there is full jurisdiction pursuant to Rule 38, Section 5, and pursuant to the Act of February 13, 1925 as amended.

The Question Presented

The question is whether the beneficiary was changed from the father of the insured to his wife; the father being the named beneficiary, the Veterans Administration recognizing him as such and having no record of any change of beneficiary, but his wife claiming that she should be recognized as beneficiary because she claimed he had attempted to have the beneficiary changed to her.

The wife relies upon her own testimony and the depositions of William W. Perry, Jr., and Katherine Clark Perry to prove that the deceased attempted to change the beneficiary (Record pp. 1, 26, 30). The father relies upon the papers of record with the Veterans Administration showing he is the beneficiary and also the testimony of the mother and uncle of the deceased to show that the beneficiary was not changed. Record 75 (1), 92, (18)).

The Reasons Relied on for the Allowance of the Writ

The reasons for granting the writ and reviewing the case are that an important question of federal law is involved which has not been decided and should be decided by the highest Federal Court; and that it has been incorrectly decided by the Circuit Court of Appeals for the Fourth Circuit, and that to allow the decision to stand will not only work an injustice in the present case, but will cause great confusion on the many similar insurance policies all over the nation and will

permit claims of change of beneficiary to be asserted on all sorts of oral testimony, much of which cannot be combatted by the beneficiary of record.

Petitioner prays that a proper writ of *certiorari* be issued directed to the said United States Circuit Court of Appeals for the Fourth Circuit, that this cause may be reviewed and reversed, and such other relief granted as may be proper.

JOE JOHNSON ROBERTS

By Jas. G. Martin,
Counsel for Petitioner,
(500 Western Union Bldg., Norfolk, Va.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

JOE JOHNOSN ROBERTS

vs.

MARGARET ELIZABETH ROBERTS and
UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Jurisdiction:

Jurisdiction is pursuant to section 240 of the Judicial Code as amended, 28 U.S.C., section 347.

The Error Assigned

The Circuit Court of Appeals erred in reversing the District Court and deciding that the beneficiary in the insurance policy had been changed from the father to the wife of the insured.

Statement of the Case

Joe William Roberts, deceased, for brevity hereinafter often called Roberts, Jr., was brought up and

chiefly educated by his parents, who were people of very small means, near Soddy, Tennessee. He entered the Navy and went into the air force. He took out a $10,000 National Service Life insurance policy in favor of his father, Joseph Johnson Roberts, as sole beneficiary. His father and mother lived together and he knew that his father would care for his mother. This policy was taken out the 14th day of May, 1942, and mailed to his father, and remained in possession of his father with the knowledge and approval of Roberts, Jr., till after Roberts, Jr. died on January 10, 1944. Thereafter it was duly turned over to the Veterans Administration, and monthly instalments paid to the father until stopped pending this suit.

Roberts, Jr. married Margaret Elizabeth Roberts, on December 19, 1942, she being a young woman in good health, able and accustomed to earn a living for herself. We understand she remarried some months ago.

He never changed the beneficiary from his father, left the policy always with his father, and shortly before his death, told his uncle and mother, in effect, that the policy was still in force in favor of his father.

The findings of fact by the District Court are very clear and well supported by evidence; and after finding the policy was taken out and in force with the father as beneficiary, find:

> "Subsequently the insured married the plaintiff, Margaret Elizabeth Roberts, but did not cause a change in the beneficiary nor did he perform such act or acts as were required to effect such change of beneficiary." (Record 67).

The wife claims that in December, 1942, Roberts, Jr. signed a form to change beneficiary to her in Jacksonville, Florida, and left it with some unknown official to be sent to the proper place. But it never got to the proper place, although other papers then signed by him did. And long thereafter he continued to leave the policy with his father, and told his mother and uncle that it was still in force in favor of his father. And in 1943, Roberts, Jr. and his wife visited in the very house where his parents lived and the policy was, and never asked for its return, or that it be turned over to his wife; and though Roberts, Jr. wrote many letters to his wife, no letter mentions this insurance.

Argument

All the evidence in the case was heard orally in the presence of the District Court except the depositions of Mr. and Mrs. Perry and the findings of fact of the District Court were entitled to extremely great weight. The opinion of the District Court is shown at page 63 of the printed record. We submit that for a Circuit Court of Appeals to reverse the findings of fact under such evidence is erroneous and would throw into great confusion the questions of who are beneficiaries on these war risk insurance policies.

It is to be noted that neither in this case nor in *Bradley* v. *U. S.*, 142 Fed. (2d) 573, did the court hold that the confidential report signed by an insured changed the beneficiary. As to such confidential report, the majority opinion in *Bradley* v. *U. S.* said:

"* * * The Administration was a total stranger to the report, and did not receive it or have knowledge of its execution until after the death of the insured, and it was forwardetd to the Administration upon its request. It is not a notice of any kind, is not a direction that the name of the beneficiary be changed, and does not express or indicate even indirectly or inaptly a desire to have the beneficiary changed. Indeed, it is not a voluntary expression of any wish, desire or intention. At most it indicates a belief or understanding that his wife was the then present beneficiary. When given its most liberal construction in the light of all the facts and circumstances, we are convinced that it cannot be treated as an effectuation of the insured's intention to change his beneficiary."

We respectfully submit that this case should be reviewed, and the decision of the Circuit Court of Appeals reversed.

By Jas. G. Martin,
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